

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR16-0057-CJW

TYLER KONIGSMARK,

TRANSCRIPT OF
SENTENCING

Defendant.

_____/

The Sentencing held before the Honorable Mark W. Bennett, Judge of the United States District Court for the Northern District of Iowa, at the Federal Courthouse, 111 Seventh Avenue Southeast, Cedar Rapids, Iowa, December 1, 2016, commencing at 10 a.m.

APPEARANCES

For the Plaintiff: MARK A. TREMMEL, ESQ.
Assistant United States Attorney
111 Seventh Avenue Southeast
Cedar Rapids, IA 52401

For the Defendant: CHRISTOPHER J. NATHAN, ESQ.
Assistant Federal Defender
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222 Third Avenue Southeast
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Also present: Jennifer Elliott, U.S. Probation

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1 THE COURT: Good morning. Please be seated.

2 THE CLERK: This is Case Number 16CR57, the
3 United States of America versus Tyler Konigsmark. The
4 United States Probation Office is represented via
5 telephone by Jennifer Elliott. Counsel, please state
6 your appearances.

7 MR. TREMMEL: Mark Tremmel, U.S. Attorney's
8 Office.

9 THE COURT: Good morning again, Mr. Tremmel.

10 MR. NATHAN: For Mr. Konigsmark who is present
11 in court, Christopher Nathan.

12 THE COURT: Good morning, Mr. Nathan.

13 Mr. Nathan, have you had a full, fair, and complete
14 opportunity to review the presentence report and the
15 sentencing worksheet with your client?

16 MR. NATHAN: Yes, Your Honor.

17 THE COURT: And this is scored as a total
18 offense level 43, criminal history category 1, statutory
19 provision of a 120-month mandatory minimum up to a
20 statutory maximum life sentence, and the advisory United
21 States Sentencing Guideline range comes out at life, and
22 I understand there are no objections to the guideline
23 calculations. Is that correct?

24 MR. NATHAN: Yes, Your Honor.

25 THE COURT: And is that correct, Mr. Tremmel?

1 MR. TREMMEL: Yes, Your Honor.

2 THE COURT: Okay. Do you have evidence that
3 you intend to offer, Mr. Nathan?

4 MR. NATHAN: Yes, Your Honor.

5 THE COURT: Would you like to proceed with that
6 evidence?

7 MR. NATHAN: Yes, Your Honor. First I'd ask
8 the Court to sustain the defense objections to the
9 presentence report. Those are objections 1 through 5.

10 THE COURT: What's the government's position?

11 MR. TREMMEL: Your Honor, regarding the
12 objections to paragraphs 9, 10, 11, and 16, the parties
13 have discussed those objections, and the defendant does
14 not dispute that in their interviews the two minors made
15 the statements in these paragraphs. However, he does
16 object to the factual accuracy of the objected-to
17 statements. So that's -- that was our understanding was
18 he's not objecting that they made the statements. He has
19 a different version of that.

20 THE COURT: Now, is that your understanding of
21 the nature of your objections, Mr. Nathan?

22 MR. NATHAN: My understanding is that denial of
23 their factual accuracy is a denial.

24 THE COURT: Did you two discuss this prior to
25 the hearing? Apparently not. I think there's a

1 misunderstanding between the two of you as to what the
2 nature of the objection was. My understanding is
3 Mr. Tremmel understands it as you're not denying that
4 they made it. You're just denying that they're true.
5 But your position, Mr. Nathan, is it's just a flat
6 objection and, therefore, puts the government to its
7 burden of proof that the statements were actually made
8 and then I would have to decide the veracity of the
9 statements.

10 MR. NATHAN: Then I apologize. Mr. Tremmel is
11 accurately reflecting the nature of our conversation. We
12 acknowledge the statements were made, but we deny their
13 factual accuracy.

14 THE COURT: Oh, okay. So then there's no
15 disagreement.

16 MR. TREMMEL: That's correct, Your Honor.

17 THE COURT: Okay. There appeared to be, didn't
18 there?

19 MR. TREMMEL: I wasn't sure from the record
20 here, but I think that's been cleared up, Your Honor.

21 THE COURT: Okay. Okay. Is the government
22 calling any witnesses in this case?

23 MR. TREMMEL: No witnesses, Your Honor.

24 THE COURT: Will there be any victim impact
25 testimony?

1 MR. TREMMEL: No victim impact testimony, Your
2 Honor.

3 THE COURT: No?

4 MR. TREMMEL: That's correct.

5 THE COURT: Okay.

6 MR. TREMMEL: We do have one stipulation, Your
7 Honor.

8 THE COURT: Yes. Why don't you proceed with
9 that stipulation.

10 MR. TREMMEL: The parties have agreed to
11 stipulate that the busses the three victims rode on
12 carried students from the sixth, seventh, and eighth
13 grades.

14 THE COURT: And, Mr. Nathan, you agreed with
15 that?

16 MR. NATHAN: Yes, Your Honor.

17 THE COURT: Okay. Then that's part of the
18 factual record and taken as true.

19 Does the defense have any evidence you'd like to
20 offer?

21 MR. NATHAN: Yes, Your Honor. First the
22 defense also offers a stipulation.

23 THE COURT: Please proceed.

24 MR. NATHAN: That on May 16 when the defendant
25 was interviewed by law enforcement with respect to the

1 instant offense that the defendant asked to apologize to
2 the victim A.P.

3 THE COURT: And is the government willing to
4 stipulate to that?

5 MR. TREMMEL: Yes, Your Honor.

6 THE COURT: Okay. Then that is accepted as
7 true as well.

8 You have some exhibits you need to offer?

9 MR. NATHAN: At this time the defense moves to
10 admit Exhibits A through E.

11 * * * *

12 (Exhibits A through E were offered.)

13 * * * *

14 THE COURT: Any objection to Defendant's
15 Exhibits A through E, Mr. Tremmel?

16 MR. TREMMEL: No, Your Honor.

17 THE COURT: Defendant's Exhibits A through E
18 are admitted.

19 * * * *

20 (Defendant Exhibits A through E were admitted.)

21 * * * *

22 THE COURT: And I believe you're calling a live
23 witness?

24 MR. NATHAN: Yes, Your Honor.

25 THE COURT: Okay. You may proceed.

1 MR. NATHAN: The defense calls Dr. Konar.

2 THE COURT: Thank you. Doctor, if you'd just
3 come up here by the witness box which is over here, then
4 I'll swear you in. Good morning. Would you raise your
5 right hand, please.

6 ARTHUR KONAR, DEFENDANT'S WITNESS, SWORN

7 THE COURT: Thank you. Please be seated in the
8 witness box there and -- oh, how kind of you to have your
9 card. Thank you. Nope, it's over there. It's in a
10 little different place than most courtrooms. And you can
11 adjust the chair and the microphone so you can speak
12 directly into the microphone. And would you tell us your
13 name, please, and spell your last name.

14 THE WITNESS: Dr. Arthur Konar, K-o-n-a-r.

15 THE COURT: Your parents had a lot of
16 foresight. They put "doctor" on your birth certificate?

17 THE WITNESS: Arthur H. Konar, Your Honor.

18 THE COURT: Right. Yeah, I didn't ask your
19 title. I asked your name. They're quite different.

20 THE WITNESS: That is correct, Your Honor.

21 THE COURT: My parents didn't have the same
22 foresight either. They didn't put "judge" on my birth
23 certificate. Thank you.

24 Mr. Nathan, you may proceed.

25 MR. NATHAN: Thank you, Your Honor.

1 DIRECT EXAMINATION

2 BY MR. NATHAN:

3 Q. Good morning, sir.

4 A. Good morning.

5 Q. Could you please state your profession.

6 A. I am a licensed psychologist in the state of Iowa.

7 Q. Could you also state your education and any titles
8 that you may hold.9 A. Of course. I received a bachelor's degree from
10 Oberlin College in Ohio in biology and psychology. I
11 went on to get a master's degree in developmental
12 psychology at Columbia University in New York City. And
13 then I got a Ph.D. in counselling psychology at the
14 University of Missouri at Columbia.15 I went on to do a postdoctoral fellowship over -- in
16 clinical neuropsychology through the commonwealth of
17 Virginia and the Hunter Holmes McGuire VA Medical Center
18 in Richmond, Virginia, and have worked as a psychologist
19 and as a clinical neuropsychologist in the states of
20 Nebraska and Iowa since 1986.21 Q. Thank you. Could you also describe your experience
22 in psychology, practical.23 A. I -- in the 1980s I worked as -- primarily as a
24 clinical neuropsychologist at Immanuel Medical Center and
25 at Madonna Rehabilitation Center in Omaha and Lincoln,

1 Nebraska, respectively. I had different positions
2 including running a postdoc fellowship at the Immanuel
3 Medical Center in Omaha. And I also had held a position
4 over at St. Joseph Center for Mental Health in Omaha,
5 Nebraska.

6 Starting in the 1990s, I began a private practice in
7 Lincoln, Nebraska, which I had through 1998 when we moved
8 to Iowa. In that practice I provided evaluations, saw
9 therapy clients, as well as was a clinical consultant and
10 a supervisor in an APA-approved clinical internship at
11 the Rivendell Psychiatric Center in Seward, Nebraska.

12 My wife and I moved to Ames, Iowa, in 1998, and I've
13 been a practicing psychologist in Iowa since then.
14 During that time period from 1998 through 2014, in
15 addition to being a psychologist, a practicing
16 psychologist, I was a lecturer and then in 2006 got
17 promoted to a senior lecturer at Iowa State University
18 where I taught graduate students in their APA-approved
19 counselling psychology program in psychological
20 assessment, in all forms of psychological assessment,
21 with classes in intelligence and memory testing,
22 personality testing, general psychological assessment,
23 and introduction to psychological assessment.

24 I also taught classes, large classes, to
25 undergraduate classes as well as small classes, and those

1 classes included about 14 sections of abnormal
2 psychology, a 400-level course. I designed and taught a
3 class in abnormal psychology in children and adolescents,
4 a 300-level course, and also taught seminars in forensic
5 psychology and in introduction to professional psychology
6 to undergraduates at Iowa State University.

7 Q. Thank you. What is clinical neuropsychology?

8 A. Clinical neuropsychology is a subspecialty of
9 psychology or clinical psychology which looks at
10 attempting to do a psychological evaluation which would
11 be a functional analysis of brain behavior types of
12 insults or problems. Those problems can either be
13 acquired types of problems through things like having a
14 closed head injury or a cerebral vascular accident. Or
15 they can be problems which occur that are more
16 developmental such as things like ADHD or various -- or
17 Asperger's disorder, autism, et cetera.

18 Q. At my request did you interview Mr. Konigsmark?

19 A. Yes, I did.

20 Q. Now, the interview or evaluation that you conducted
21 of Mr. Konigsmark, was that a clinical neuropsychological
22 evaluation?

23 A. No, it was not.

24 Q. What was it?

25 A. It was really more of a straight psychological

1 evaluation, a clinical psychological evaluation, in which
2 I proceeded with an interview, with IQ testing, with
3 personality testing, with self-reports as well as being
4 able to go through various available medical records.

5 Q. Did you produce a written report based on that
6 interview?

7 A. Yes, I did.

8 Q. Does the report reflect your professional opinion or
9 opinions based on your evaluation of Mr. Konigsmark?

10 A. Yes, it does.

11 Q. Now, I believe you mentioned as part of your
12 evaluation or interview of Mr. Konigsmark that you
13 administered some tests to him?

14 A. Yes, I did.

15 Q. What tests did you administer, and can you describe
16 them, please.

17 A. Absolutely. There are differences between formal
18 and informal tests. And the formal tests which I
19 administered would be an individualized intelligence test
20 called the Wechsler -- and that's W-e-c-h-l -- s-l-e-r --
21 Adult Intelligence Scale Fourth Edition, the MMPI-2. And
22 that would be the Minnesota Multiphasic Personality
23 Inventory Second Edition. I also gave him the -- a
24 self-report instrument called the Beck Depression
25 Inventory II. And then finally we had a clinical

1 interview as well as doing a more informal mental status
2 evaluation.

3 Q. Okay. Taking those formal and informal tests or
4 interviews one at a time, can you please describe or
5 explain what they are and why you administered them.

6 A. Of course. Let's start off with the interview
7 because that's kind of the easiest thing to do. A
8 clinical interview is more than simply sitting down and
9 talking to a person. A clinical interview is --
10 especially when you're doing something in a forensic
11 setting such as this, you have to consider both the
12 nature of the charges and that person's role within the
13 charges.

14 So you talk to him a little bit about his
15 understanding in terms of what he's been charged with, is
16 he following what he's been charged with, does he
17 understand, you know, how he is proceeding, how he is
18 working with his attorney, et cetera.

19 At that point after that you really move more into a
20 straight clinical type of interview where you get a
21 person's history. You find out in terms of where they
22 came from, what their early experiences were like, what
23 their family situation was like, what their early
24 academic type of situation was like, et cetera, and go
25 through various types of -- types of symptomatology that

1 appear to be coming on up, really starting off with types
2 of diagnoses which would be the most severe.

3 So you rule out things like psychosis or bipolar
4 disorders which turned out to be not present for this
5 person and then kind of move into other types of
6 diagnostic criteria, going through the list, trying to
7 gain information about that.

8 And as part of the interview process or at least as
9 part of the way I have been trained and developed to do
10 the interview process, you don't simply ask the question
11 and then check it off a list because, candidly, people
12 can tell you what they want to tell you. You do a lot of
13 observations during that, and when you have questions,
14 you come back and circle around and try to get more
15 information again.

16 In addition to that, I performed what would be
17 considered a mental status evaluation. A mental status
18 evaluation is really trying to look at kind of basic
19 functioning and sensorium. So you ask the person, for
20 example, in terms of issues with hallucinations and
21 delusions, you look at things like, you know, how well
22 they're able to track with you. You look at issues in
23 terms of can they develop some level of abstract
24 thinking. You look at very short-term memory functions.
25 You also look at memory functions that may exist with

1 different sorts of interference, basically how well is
2 that person able to interact and function in just the
3 most basic manner.

4 The Wechsler test is an individualized administered
5 intelligence test, and it's really based off of David
6 Wechsler's definition of intelligence which is a person's
7 ability to think rationally, deal effectively, and --
8 and -- act rationally, deal effectively, and act
9 purposefully with his or her own environment.

10 And in doing so it's set up with ten different types
11 of subtests. You administer these subtests in a
12 standardized manner, score up the test, and end up with
13 four different sorts of indices as well as a final IQ
14 score which can give you information about the
15 person's -- not only the person's general intelligence
16 but in terms of their strengths and weaknesses. And it
17 can also give you information in regards to what may be
18 some possible diagnostic types of issues both in terms of
19 intellectual abilities as well as learning types of
20 problems.

21 Finally I administered the Minnesota Multiphasic
22 Personality Inventory. That test is the gold standard in
23 terms of looking at different sorts of clinical types of
24 problems and issues. It's an empirically based test, the
25 most researched personality inventory in the country and

1 in the world. And this is one which you can look at
2 different sorts of scale elevations and, based on a
3 person's elevations and lack thereof, make some
4 assessments not only in terms of diagnoses for the
5 possible clinical types of problems but also get a better
6 sense in terms of how does this person function and under
7 stress how is this person going to react in appropriate
8 manners.

9 Q. Thank you. Based on your administration of the
10 clinical interview and the mental status evaluation, what
11 did you find and conclude?

12 A. Well, I wouldn't say that I necessarily concluded
13 anything from simply any one specific part because when
14 you do a psychological evaluation, the conclusions really
15 come from an integration of everything. But certainly
16 what I can state from what I found on -- out from the
17 interview and the -- and the mental status evaluation was
18 that Tyler did not suffer from any type of psychosis.
19 And of that I was sure.

20 And what I also found out was that it was pretty
21 clear that he was an individual who was experiencing a
22 fair amount of anxiety, a lot of depression.

23 There was certainly a likelihood of ADHD, though I
24 couldn't determine that simply from that and that he was
25 operating in all likelihood with lower intellectual

1 functioning. Lower intellectual functioning does not in
2 any way, shape, or form mean that he would be diagnosed
3 with, quote, a mild intellectual disability which in
4 prior renditions of diagnostic manuals would have been
5 considered mental retardation.

6 But it was certainly pretty clear to me that this
7 was an individual who was, at the very best, below
8 average and possibly more on the borderline region. But,
9 again, I couldn't necessarily conclude that without doing
10 the further tests.

11 Q. Okay. Then based on your further examination of
12 Mr. Konigsmark, by which I mean the administration of the
13 Wechsler test and the MMPI-2, what did you find and
14 conclude, doctor?

15 A. What I found and conclude, that Tyler did and, in
16 fact, suffer from ADHD which was also later defined out
17 in his school records, and that offered some
18 corroboration with that, that he suffered from a
19 depressive disorder as well as an anxiety disorder, that
20 he had learning problems and would be classified as
21 borderline intellectual functioning.

22 Q. Doctor, were you able to form an opinion as to
23 whether Mr. Konigsmark is attracted to prepubescent
24 persons?

25 A. Yes, I was.

1 Q. What is your opinion, doctor?

2 A. My opinion is that he is not inherently a pedophile.
3 He is not diagnosed as being a pedophile and, therefore,
4 would not be necessarily attracted to prepubescent
5 females.

6 Q. My understanding is that pedophilia or the
7 pedophilic condition refers to sexual conduct with a
8 person under the age of 13. And, of course, this case
9 involved a 12-year-old.

10 A. Correct.

11 Q. Given that, could you please explain further what
12 you mean that you found that Mr. Konigsmark does not have
13 an attraction to prepubescent minors.

14 A. Yes. I -- my finding in no way attempts to diminish
15 or mock the behaviors which Mr. Konigsmark discussed with
16 me or which he is charged with. I personally find them
17 to be repugnant. It's really looking at a pattern of
18 behavior.

19 And so my findings are not based on the -- on the
20 specifics of the actions that were taken and which were
21 admitted to during this time period but rather looking at
22 a pattern of his behavior and trying to come up with a
23 more comprehensive understanding in terms of why these
24 behaviors existed.

25 Individuals who I would clinically diagnose with

1 pedophilia which I've done on multiple occasions in the
2 past are individuals who really have this predisposition
3 and this pattern of behavior to act in some way. This
4 was clearly not the case with Mr. Konigsmark.

5 Q. Were you able to form an opinion as to whether
6 Mr. Konigsmark is likely to commit further sex crimes
7 upon his release from imprisonment?

8 A. Yes, I was.

9 Q. What is that opinion, doctor?

10 A. That opinion is that he is not likely to further
11 commit these sex crimes.

12 Q. What is that based on?

13 A. Once again, when one does a psychological
14 evaluation, what you look at are both patterns and
15 behaviors as well as redundancies. Mr. Konigsmark --
16 there are really kind of two factors which drove me to
17 that, one of which is the absence of behavior and one of
18 which is the presence of alternative types of
19 understandings.

20 Mr. Konigsmark is an individual with both ADHD, low
21 self-esteem, as well as poor intellectual functioning.
22 He's a person who is really operating at a mental age
23 which is much lower and has struggled with impulse
24 control and organizational issues that would be prominent
25 with ADHD.

1 So these are more parsimonious explanations as well
2 as just the contextual issues in terms of some of the
3 shame that he was involved with prior to doing -- to
4 engaging in these acts.

5 And the other part is, quite honestly, the absence
6 of behavior, and the absence of behavior is that in
7 regards to his -- to his prior functioning before he was
8 a bus student attendant, there is no documentation in
9 regards to the fact that he was involved sexually or
10 interested sexually in females much younger than him. In
11 fact, the prior sexual types of interactions he's had
12 have all been with females that have been age
13 appropriate. Or I don't even want to say age appropriate
14 because I don't think it's necessarily appropriate to
15 have sex at a younger teenage age but with age cohorts to
16 his -- to his behaviors.

17 Q. Now, you mentioned Mr. Konigsmark's mental or
18 intellectual age. In your opinion what is
19 Mr. Konigsmark's mental or intellectual age?

20 A. I would place him somewhere between 12 and 14 years
21 of age.

22 Q. Doctor, just to back up for a second, you mentioned
23 that you administered these tests to Mr. Konigsmark, and
24 then did the defense provide you with additional records
25 from the Cedar Rapids School District about

1 Mr. Konigsmark?

2 A. Yes, they did.

3 Q. And just to highlight portions of those records, did
4 those records include that when Mr. Konigsmark was in the
5 fourth grade that he was evaluated for level of
6 performance and that the evaluation revealed that in
7 fourth grade he was functioning at the first-grade level?

8 A. Yes.

9 Q. And even earlier when he was in kindergarten and age
10 6, was he administered a different version of the
11 Wechsler test?

12 A. Correct. From ages 6 to 16, you can be given the
13 Wechsler Intelligence Scale For Children. The current
14 iteration of that is the WISC-V, but this was a long time
15 ago, and the version that he was given was the WISC-III.

16 Q. And when Tyler -- excuse me. When Mr. Konigsmark
17 was tested in kindergarten at age 6, among his scores,
18 did he test in the fifth percentile, in the second
19 percentile, and in the first percentile in comparison
20 with peer-aged children?

21 A. Yes.

22 Q. Did you find it significant that the records from
23 the Cedar Rapids School District and the prior testing of
24 Mr. Konigsmark in part confirmed or in whole confirmed
25 your own evaluation of Mr. Konigsmark?

1 A. As you mentioned, yes, I did. As you mentioned, I
2 was not given that material until after I wrote my
3 report. The reliability between tests given at age -- an
4 IQ test given at age 5 or 6 -- actually I think it was 6
5 versus an IQ test given at age 20 is going to be
6 relative -- is going to have a high error of measurement
7 because there's a lot of changes that occur. And it was
8 striking how similar the tests were and, quite honestly,
9 offered validation to the scores that I had were an
10 accurate portrayal in terms of how he was -- in terms of
11 what his skill set is.

12 Q. In your review of the school records, did the
13 records also reveal that as part of his what I'll call an
14 educational plan that the school district considered
15 attaching a bungee cord between Tyler and his desk?

16 A. I did read that, yes.

17 Q. Is that consistent with the diagnosis of ADHD?

18 A. Well, it's certainly -- yes, it would be. I
19 would -- for the record I would find that practice to be
20 a very bad idea in that it would just create a lot of
21 shame for that student. But that's not the question
22 asked, so I apologize for that commentary.

23 I found that the -- that placing a bungee cord on
24 the desk, the only way you can really look at that as
25 being true is that this would be a child who simply could

1 not or would not stay in their seat and, therefore, this
2 was a way to keep them more stationary. And the
3 inability to stay in your seat, the inability to exhibit
4 good impulse control even as an elementary school child
5 is very indicative of a child -- it doesn't mean that he
6 has ADHD, but it certainly would be indicative of a child
7 who does have ADHD.

8 Q. Did your further review of the school records reveal
9 that Tyler at some point was placed into what's called a
10 504 program?

11 A. Correct.

12 Q. What is the 504 program?

13 A. There are essentially two types of school programs
14 that you can have for -- to get additional services. One
15 would be a direct IEP or an Individualized Educational
16 Program, and one would be a 504 program.

17 A 504 program is one in which an outside agency is
18 going to determine that that child is one that has
19 special needs and that these special needs need to be --
20 need to be addressed by the school system in order for
21 that child to attain his or her own optimal level of
22 educational and academic development.

23 Q. Did the records demonstrate that Mr. Konigsmark
24 demonstrated (sic) in the 504 program throughout his time
25 in the Cedar Rapids School District?

1 A. What the records indicated was that in 2011
2 Mr. Konigsmark or at that point entering the high school
3 year chose to self-discharge himself out of the 504 plan.

4 Q. And approximately 2011, did that coincide with
5 another significant event in Mr. Konigsmark's life?

6 A. Yes, it did.

7 Q. What was that?

8 A. That was the year that his grandmother died.

9 Q. And did Mr. Konigsmark report whether his
10 grandmother was his primary caregiver?

11 A. Yes, he did.

12 Q. Your review of the school records, do they reveal
13 whether Cedar Rapids School District attempted to contact
14 Tyler's mother about Tyler's decision on his own to
15 withdraw from the 504 program?

16 A. All I saw in the records -- and there may be
17 something else that was not given to me. But all I saw
18 in the records was a sticky note which basically stated
19 that Tyler as a child going from the eighth to the ninth
20 grade was choosing to discharge himself from the 504
21 plan.

22 Q. Okay. Moving forward to Mr. Konigsmark's
23 imprisonment, do you have an opinion as to whether
24 Mr. Konigsmark will be vulnerable with respect to other
25 inmates?

1 A. Yes, I do.

2 Q. What is that?

3 A. My opinion and, candidly, my fear is that he is
4 going to be very vulnerable.

5 Q. Why is that?

6 A. As I mentioned before, Tyler is a person of low
7 intellectual functioning. What's also true is that he is
8 a person who never had any contact with his biological
9 father and, in addition, is somebody who interacted with
10 his mother's long-term boyfriend who he found to be
11 irrational and at times abusive. He is a person who has
12 low self-esteem, is very eager to please, and would be
13 very easy to manipulate.

14 Q. Doctor, is there anything that I forgot to ask you?

15 A. Not that I can think of.

16 MR. NATHAN: Nothing further, Your Honor.

17 THE COURT: Thank you.

18 Mr. Tremmel, you may cross-examine.

19 CROSS-EXAMINATION

20 BY MR. TREMMEL:

21 Q. Morning, doctor.

22 A. Good morning, sir.

23 Q. Now, just to clarify, you are not a member of the
24 American Board of Professional Psychology or the ABPP?

25 A. That would be correct.

1 Q. You have a diplomate from the American Board of
2 Psychological Specialties?

3 A. That's correct.

4 Q. But you are not board certified in clinical
5 neuropsychology.

6 A. Correct.

7 Q. Now, I'm trying to determine what actual paper
8 materials you looked at when you made your evaluation in
9 this case, and on page 2 of your report you state,
10 "Review of legal indictment and review of hospital
11 records."

12 First of all, on the legal indictment, was that just
13 the indictment, or was there any other paperwork related
14 to this case such as police reports or other documents
15 that you reviewed?

16 A. Just the indictment.

17 Q. And then the hospital records were from when?

18 A. They were from UnityPoint Health in Cedar Rapids
19 from an emergency room visit from 9-23-14 as well as
20 medical records from after when Mr. Konigsmark was
21 arrested from 5-13-16 -- or May 13 of 2016 to May 16,
22 2016.

23 Q. So other than the emergency room visit in 2014, the
24 other records were all after this investigation began?

25 A. Correct.

1 Q. Any other records that you reviewed other than the
2 indictment and the medical records before you did your
3 examination of the defendant?

4 A. No.

5 Q. Any other records you reviewed other -- after your
6 examination other than the school records that Mr. Nathan
7 referred to?

8 A. No.

9 Q. Did you interview anyone other than the defendant?

10 A. No.

11 Q. On page 1 of your report in the bottom paragraph,
12 the top sentence of that paragraph says, "Tyler
13 Konigsmark reportedly has a history of mental illness."
14 It says, "Reportedly." What's your source for that
15 information?

16 A. My report was twofold. Number one, a conversation,
17 very brief conversation, with his attorney and, secondly
18 and more importantly, the medical records from UnityPoint
19 Health which talked about him having anxiety issues, was
20 diagnosed with anxiety, and was given medication for
21 that.

22 Q. So the mental illness is anxiety.

23 A. That's correct. If I could further say that in my
24 conversation with his attorney, his attorney told me --
25 and this is where the reportedly part would have come on

1 in -- that he believed that Tyler had a prior diagnosis
2 of ADHD. Obviously I didn't have that information until
3 I was able to look at the school records after the
4 evaluation.

5 Q. I'd like to talk about the school records a little
6 bit because there was a reference -- and this would be to
7 when the defendant was in fourth grade about his
8 performing at the first-grade level. Is that from the
9 intensive instruction plan?

10 A. That would be correct.

11 Q. And that says actually that his -- he was at a
12 first-grade level on the BRI and DIBELS Oral Reading
13 Fluency; correct?

14 A. Well, what it -- yes, it does. What it states is it
15 really is looking at an overall current level of
16 performance, and that talked about the first-grade level.

17 Q. First-grade level in reading, and then it says fifth
18 percentile per AEA norms; correct?

19 A. Correct.

20 Q. But his expected level of performance -- so it's a
21 three-grade-level difference on reading. That doesn't go
22 to any other aspect of his intellectual functioning.

23 A. Correct.

24 Q. Now, if we go to the age 6, there was mention of him
25 being in -- and I apologize if I misstate the numbers

1 here. I believe the scores of 5, 2, and 1 were
2 mentioned. This would be on the second page of the Grant
3 Wood AEA report from age 6.

4 A. I'm sorry, sir. Could you please show me where
5 you're talking about?

6 Q. On the Grant Wood Area Educational Agency learning
7 development --

8 A. Right, I'm on page 2.

9 Q. Page -- the second page where it says test of early
10 reading ability?

11 A. Uh-huh.

12 Q. In that paragraph I see scaled scores of 5, 2, and
13 1, and I assume when Mr. Nathan was asking you about
14 numbers that's where those numbers were from?

15 A. Yes.

16 Q. So those lower scores are all, again, tests of
17 reading ability.

18 A. Yes.

19 Q. And actually in the top paragraph on that page, he
20 had a 32nd percentile in writing.

21 A. Yes.

22 Q. And then in the third paragraph on that page, he had
23 a 24 percentile in math.

24 A. Yes.

25 Q. And at the very end of that document on page 3, it

1 says Tyler's mother may wish to pursue a medical
2 evaluation at her own expense to rule out attention
3 deficit with hyperactivity disorder; is that correct?

4 A. Yes.

5 Q. Okay. Is there anything in the school records that
6 you found about his having an intellectual disability?

7 A. What I have -- and I don't have it right in my
8 fingertips, though. If you give me a moment, I can --
9 was the IQ scores from the WISC-III, but that would be --
10 again, we're talking about after the fact, not -- not
11 before I wrote my report.

12 Q. And these would be at what age?

13 A. This would have been at age 6. He doesn't have a
14 score per se, but it showed that he was not able to
15 perform on the WISC-III.

16 Q. Because he frequently responded, "I don't know"?

17 A. Correct.

18 Q. And he often gave up when he perceived an item as
19 too difficult.

20 A. It stated that he had a low frustration tolerance.

21 Q. And that would be consistent with ADHD?

22 A. Correct.

23 Q. But nothing in here about borderline intellectual
24 functioning.

25 A. It would be -- given the fact that they could not

1 actually come up with the -- they couldn't come up with a
2 valid WISC-III, it would be -- you couldn't give a
3 diagnosis of borderline intellectual functioning because
4 he wasn't able to take the test.

5 Q. Is there anything else in the school district
6 reports that supports -- or that states he is borderline
7 intellectual functioning or having an intellectual
8 disability other than his failure to complete those items
9 on the WISC-III?

10 A. When one looks at the -- not -- his inability to do
11 the items of the WISC-III at age 6, when one looks at his
12 reading scores, when one views his transcripts as well as
13 being placed on a 504 plan, when one looks at the fact
14 that he was recommended to be tethered to his desk, there
15 are certainly indications that he has both ADHD as well
16 as lower intellectual functioning.

17 Q. But the 504 plan was to accommodate his difficulty
18 in focusing; right?

19 A. Yes.

20 Q. And difficulty in focusing is different from having
21 an intellectual disability. Would you agree with that?

22 A. They absolutely can go hand in hand, sir. Over time
23 if you're not able to focus what's going on in school,
24 then you stop being able to learn at a decent clip.

25 Q. So it says he has -- Tyler has -- in one of these he

1 has difficulty completing quality assignments. That
2 could be because of ADHD; correct?

3 A. Yes.

4 Q. He did complete one semester of community college;
5 is that right?

6 A. He did not -- no. To my knowledge he actually was
7 not able to complete it because of problem -- this would
8 have been done in Louisiana; correct, sir?

9 Q. That's right.

10 A. Yeah. My understanding is that he completed some
11 classes but was not able to complete a remedial math
12 class and, therefore, lost his scholarship. So I would
13 not call that a successful completion, sir.

14 Q. Now, you state that -- on page 2 of your report --
15 and this would be in the second paragraph -- that he was
16 hospitalized in May and says this occurred after he was
17 accused as a 19-year-old male to have a sexual encounter
18 with a 15-year-old.

19 A. Correct.

20 Q. Is that from the medical records?

21 A. That is from the medical records at UnityPoint, yes.

22 Q. And what is the source of the age of the victim
23 being 15 years old?

24 A. That would have been the medical records.

25 Q. Okay. And who would have -- where did that come

1 from? Was that the defendant, Tyler Konigsmark, saying
2 she was --

3 A. I would imagine that would come -- I would imagine
4 so, yes.

5 Q. Also on page 2 -- excuse me. On page 3 of your
6 report in the very bottom paragraph -- I'm looking at the
7 third sentence -- Tyler Konigsmark has reportedly had
8 sexual intercourse with four to five females all of which
9 have/had been at or around his chronological age. Once
10 again, it has the word "reportedly" in there. Where did
11 you get that information from?

12 A. I got that information from Tyler Konigsmark.

13 Q. During your interview?

14 A. Yes.

15 Q. So he told you all of the females he had sexual
16 intercourse with had been around his chronological age.

17 A. Obviously we did discuss the crime that he, you
18 know, has admitted to, and that would not include that
19 group, but prior to -- prior to the events of the spring
20 of 2016, that's what he stated, yes.

21 Q. And at the bottom sentence of that page it said, "He
22 said he has never been attracted to females that were
23 appreciably younger than him."

24 A. Correct.

25 Q. I assume "appreciably" is not his word. Is that

1 yours?

2 A. That's my word, yes.

3 Q. What did he say?

4 A. I can't give -- he said -- I think I asked him have
5 you been -- are you or have you had an attraction to
6 females that were much younger than you, and he said no.

7 Q. And did you accept that when he told you that?

8 A. I didn't accept that as truth per se. I looked
9 at -- once again, I was collecting information. And
10 after I collect information, I then form opinions. I
11 don't -- simply hearing the statement doesn't make it
12 true.

13 Q. So after reviewing everything, do you believe that
14 he has never been attracted to females that were
15 appreciably younger than him?

16 A. I believe that he is an individual who has a much
17 lower mental age as I stated before.

18 Q. And that wasn't my question.

19 A. Okay.

20 Q. Do you believe that he has never been attracted to
21 females that were appreciably younger than him?

22 A. No, I do not believe that.

23 Q. On page 2 of your report in the bottom paragraph you
24 state, "Tyler admits that he had inappropriate contact
25 with a minor that involved both Snapchatting and

1 exchanging explicit photos."

2 A. Correct.

3 Q. That does not state that he had sexual intercourse
4 with the minor, does it?

5 A. No, it does not.

6 Q. At any point during your interview with him did he
7 admit that he had sexual intercourse with a minor?

8 A. Yes.

9 Q. Where is that indicated in your report here?

10 A. I did not include that in the report because it was
11 not part of the charges. And when I write a report, I'm
12 not going to put in that report something which the
13 person is not at that point currently charged with.

14 Q. Well, you put in there he had sexual intercourse
15 with four or five females around his chronological age.
16 He wasn't charged with that, was he?

17 A. That had nothing to do with the charges, sir.

18 Q. But you included that in your report.

19 A. Yes.

20 Q. But when you talked about what he admitted to doing,
21 all you have in your report that he admitted to doing was
22 Snapchatting and exchanging explicit photos and then that
23 it was a seventh grade student.

24 A. Correct.

25 Q. But when you talk -- on the bottom of page 2,

1 nowhere in there do you say he admitted to having sex
2 with a 12-year-old. Did you have a conversation with him
3 again after your initial interview where he clarified
4 that he left some things out?

5 A. No, no. I think I was very clear. He admitted --
6 what he stated was not that he had sexual intercourse.
7 Quite honestly what he stated was that he attempted to
8 have sexual intercourse but that it didn't work or he was
9 not able to have any kind of penetration with this
10 person. That's what he stated to me.

11 Nonetheless, again, as a -- as a matter of course,
12 when a defendant is charged with a crime in terms of
13 writing up what the alleged event is or is not, if the
14 person in part of their conversation with me admits to
15 things that are not stated specifically in the
16 indictments, then I as a psychologist believe that I have
17 the responsibility to not state that he's admitting to
18 things which in my understanding with the charges he is
19 not being charged with at that point.

20 Q. So just to clarify then, he told you that he was
21 unable to have penetration, so he actually didn't have
22 sexual intercourse with her or he attempted to but he was
23 not able to penetrate her?

24 A. That is what I understand, yes.

25 Q. That's what he --

1 A. That's what he told me, correct.

2 Q. I directed you to page 4 of your report, and this
3 would be the paragraph directly above the heading
4 Behavioral Observations.

5 A. Correct.

6 Q. You state in here that one final clinical note is
7 that Tyler Konigsmark reports to have unusual perceptual
8 experiences. He said that, quote, I see ghosts in a way.
9 I see figures if I concentrate real hard. And then he
10 goes on about a cable TV show.

11 A. Correct.

12 Q. Is there -- are there any other records other than
13 his telling you that he saw ghosts?

14 A. No.

15 Q. The first report of that that you can see from your
16 review of the materials is in his interview with you.

17 A. Yes.

18 Q. So is it your opinion that he saw ghosts?

19 A. It's my opinion that he does not have a delusional
20 disorder or psychosis. I didn't take that information in
21 there to form a diagnostic -- a positive diagnostic
22 opinion from it.

23 Q. Well, let me direct you to page 8 of your report on
24 the very bottom paragraph. The very last sentence, he
25 clearly has bizarre sensory experiences that affected his

1 ability to make good decisions, but these do not reach
2 the level of a delusional disorder.

3 A. Correct. That was not based on that statement.
4 That was based on the MMPI-2.

5 Q. So that wasn't based on his statement about ghosts,
6 that he had bizarre sensory experiences?

7 A. The statement about ghosts offers some sort of
8 corroboration, but the statement in terms of the bizarre
9 sensory experiences came from his elevation on 8 on the
10 MMPI-2 as well as his elevations on the reconstructed
11 scales, on the RC8 which is aberrant experiences.

12 And in addition, on the Psy-5 scales from the
13 MMPI-2, he scored a T score on the psychotic score of 91.

14 And again, sir, to be very clear, I am not
15 diagnosing Tyler Konigsmark with a -- with having
16 schizophrenia. I'm not diagnosing him with having a
17 delusional disorder. I'm simply stating that he -- there
18 is some indications that these are issues for him.
19 People can have subclinical issues, and I think that that
20 would be the case in his part. But it doesn't reach the
21 level of a diagnosis.

22 Q. On page 7 -- and I would go to the second paragraph
23 from the bottom --

24 A. Is that the page beforehand, sir?

25 Q. Yes -- there's a sentence beginning, "In addition,

1 Tyler Konigsmark is suffering from serious feelings of
2 persecution and feelings that he is losing his ability to
3 master his focus and concentration."

4 A. Correct.

5 Q. Explain to me what he said about being persecuted.

6 A. Once again, those are sta -- that is a statement
7 that is not coming from his -- what he told me, but that
8 is an interpretation of the -- from the MMPI-2.

9 MR. TREMMEL: Thank you. That's all the
10 questions I have.

11 THE COURT: Thank you, Mr. Tremmel.

12 Mr. Nathan, any redirect?

13 MR. NATHAN: Yes, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. NATHAN:

16 Q. The prosecutor asked you some questions about the
17 tests when Tyler was in fourth grade?

18 A. Yes.

19 Q. And he talked to you about reading levels versus
20 writing levels and things like that. In your opinion is
21 reading ability a pretty good proxy for intellectual
22 ability?

23 A. At early ages, yes, it is.

24 Q. They also asked you about the 504 program and the
25 basis for that or what might not be the basis for that.

1 But in your review of the records, one of the bases for
2 the 504 program was achievement tests; correct?

3 A. Correct.

4 Q. Another basis was classroom performance data;
5 correct?

6 A. Correct.

7 MR. NATHAN: Nothing else.

8 THE COURT: Any recross, Mr. Tremmel?

9 MR. TREMMEL: No, Your Honor.

10 THE COURT: Doctor, I just have a few questions
11 for you.

12 THE WITNESS: Of course, Your Honor.

13 THE COURT: Am I reading your report correctly
14 on page 6 that his full scale Wechsler IQ places him in
15 the bottom 2 percent?

16 THE WITNESS: That would be correct, Your
17 Honor.

18 THE COURT: Okay. And just a friendly tip. If
19 you'd put page numbers on your report like you did on
20 your CV, it would be helpful.

21 THE WITNESS: You know, Your Honor, I thought I
22 had. I apologize.

23 THE COURT: Yeah. No problem. I went back and
24 put page numbers on it so I could refer to them.

25 So I want to jump ahead to page 10 which is your

1 conclusion section.

2 THE WITNESS: Yes, Your Honor.

3 THE COURT: And I'm focusing on the middle
4 paragraph there.

5 THE WITNESS: Right.

6 THE COURT: About his poor judgment, lack of
7 impulse control, perpetual low self-esteem.

8 THE WITNESS: Right.

9 THE COURT: How do you think those
10 characteristics affected his commission of the crime
11 here?

12 THE WITNESS: Well, I think that they were --
13 first of all, it's a great question, Your Honor, and I
14 think that they were absolutely key to it. You know,
15 unfortunately I think in my opinion for Tyler
16 Konigsmark -- and once again, I am in no way, shape, or
17 form attempting to justify this behavior.

18 THE COURT: No, I understand that.

19 THE WITNESS: Okay.

20 THE COURT: Yeah.

21 THE WITNESS: But I think for him, it really
22 was a perfect storm, and I think it was a perfect storm
23 unfortunately of the prior issues, the lower intellectual
24 functioning, the -- you know, it's not simply having ADHD
25 because a lot of people have ADHD and they don't do these

1 things. The ADHD sets the table, and then you come back
2 from also not having the guidance and structure in which
3 you can behave with these problems, you know, coming from
4 a failure experience in which he was ashamed from in
5 Louisiana and then just kind of latching on to a job
6 because that was the job that was offered to him. When
7 the job was offered to him, in my opinion Tyler ends up
8 taking the job, ends up in -- you know, feeling good
9 about the interactions he's having on the bus, does not
10 have the sense to understand -- he understands that
11 they're illegal, but he doesn't have the emotional sense
12 to understand how inappropriate and awful this is.

13 THE COURT: And I wanted to ask you -- you cite
14 to the National Institute of Mental Health report about
15 the teen brain under construction. I know you have --
16 you're involved in some neuropsychological organizations.

17 THE WITNESS: Yeah.

18 THE COURT: And I've studied this area fairly
19 extensively myself. But I just wanted to see if you
20 could explain that his lack of impulse control, isn't
21 that fairly typical for 19-year-old males?

22 THE WITNESS: It is typical of a 19-year-old
23 male. You know, what we're really talking about -- and
24 I'm sure Your Honor knows -- is really the development of
25 the prefrontal cortex.

1 THE COURT: Right. That's what I was going to
2 ask you about.

3 THE WITNESS: And so that's what we're talking
4 about. It's going to be further diminished in a person
5 with ADHD because individuals with ADHD are going to
6 struggle with prefrontal cortex types of behaviors such
7 as being able to plan and being able to kind of
8 execute -- you know, involve and execute -- execute --
9 executive functioning -- excuse me. I was stumbling on
10 that word -- and then as well as really develop impulses
11 or stops in one's behavior. The prefrontal cortex is not
12 simply engaged in the execution of behavior but also in
13 the inhibition of behavior.

14 THE COURT: And one of the reasons why
15 neuropsychologists and neuropsychiatrists know that is
16 because of the advent of functional MRI tests and brain
17 imaging.

18 THE WITNESS: Exactly.

19 THE COURT: And they can tell how well
20 developed the prefrontal cortex is, and it's really
21 undisputed among neuropsychologists that young people do
22 not have a fully developed prefrontal cortex and that's
23 the scientific explanation or the neurological
24 explanation for the lack of impulse control.

25 THE WITNESS: Absolutely. Simply when you look

1 at the FMRIIs, when you look at the PET scans, you can
2 just see where hot spots are and where hot spots aren't.

3 THE COURT: Okay. Those are all the questions
4 I have. I'm going to turn it back over to the lawyers
5 because I always give them an opportunity for any
6 follow-up questions. Any follow-up questions by the
7 lawyers?

8 MR. NATHAN: No, Your Honor. Thank you.

9 MR. TREMMEL: No, Your Honor.

10 THE COURT: Doctor, I just wanted to thank you
11 for your comprehensive report. It was very helpful to me
12 in trying to arrive at a fair sentencing in this case.
13 So I appreciate it very much.

14 THE WITNESS: I really appreciate that. Thank
15 you, Your Honor.

16 THE COURT: Okay. Thanks. And I was just
17 having some fun with you about "doctor."

18 THE WITNESS: No, I -- it was taken as such.

19 THE COURT: Ninety percent of doctors when I
20 ask them their name, you know, they say "doctor" which is
21 amusing to me because it's a title, but I was just having
22 some fun with you. Serious matter, but we can have some
23 levity too.

24 THE WITNESS: Well done.

25 THE COURT: Thank you.

1 Is there any additional evidence from the defense?

2 MR. NATHAN: No, Your Honor. Thank you.

3 THE COURT: Okay. So we're really going to be
4 arguing now about a downward variance. And here are the
5 parameters that I understand. The government has
6 recognized that a downward variance from a life sentence
7 is appropriate in this case but has suggested a floor of
8 15 years or 180 months, and the defense has suggested a
9 downward variance is appropriate in this case and has
10 suggested a range of 151 to 188 months. Is that accurate
11 in terms of what the parties are recommending?

12 MR. TREMMEL: Yes, Your Honor.

13 THE COURT: Okay.

14 MR. NATHAN: Yes, Your Honor.

15 THE COURT: Okay. It's your motion for a
16 downward variance, so, Mr. Nathan, we'll hear from you
17 first.

18 MR. NATHAN: Thank you, Your Honor. When the
19 defense arrived at its recommended range, it did so
20 keeping in mind that Congress has established the
21 mandatory minimum of 10 years. And then the defense
22 imagined the most innocent kind of case that would
23 justify the mandatory minimum.

24 And the defense recognizes some of the points made
25 by the prosecutor that based on number of victims, based

1 on the incidents of sexual intercourse, more than once,
2 and based on the ages of the victims, that this is not
3 the ten-year case.

4 And then the defense went down the guidelines in
5 criminal history category 1, and it's hard to draw a
6 distinction between 151 months and something 10 months
7 lesser or greater. But in the defense's opinion, that is
8 the appropriate range between which Your Honor should
9 sentence Mr. Konigsmark.

10 And the defense actually, so it's clear, arrived at
11 that range before it had the opportunity to fully examine
12 the Jacob case, and then the defense obviously recognized
13 that in the Jacob case Your Honor arrived at a similar
14 range.

15 And in comparing the two, there are similarities
16 that justify the similar range and, in fact, the exact
17 same sentence such as neither Mr. Jacob nor
18 Mr. Konigsmark had any criminal history. Both
19 Mr. Konigsmark and Mr. Jacob had substantial support
20 demonstrated today not only by Exhibit E, the letters,
21 but by the presence of family and friends in court.

22 THE COURT: Well, that's hard for me to gauge
23 because it could be friends and relatives of the victims.
24 So I have no idea who's supporting who here, nor does the
25 sheer number of people in the courtroom -- you know, it's

1 not a -- it's not a which way the wind is blowing type
2 public opinion poll to determine what a sentence should
3 be. But I have no way of knowing who's supporting who,
4 and there are two sides to this case.

5 MR. NATHAN: Of course, Your Honor. And then
6 the defense would simply rely on Exhibit E. The letters
7 in support --

8 THE COURT: Yes, and I read those very
9 carefully.

10 MR. NATHAN: -- were extremely well written and
11 not only indicated in their opinion what sort of person
12 that Tyler is but also the difficult childhood that he
13 went through which I'll just segue slightly that one of
14 the differences between Mr. Konigsmark and the defendant
15 in Jacob is that respectfully and cautiously the defense
16 argues that Mr. Konigsmark had a more difficult childhood
17 than the defendant in Jacob.

18 Mr. Konigsmark reported both to probation and to
19 Dr. Konar that his father has been absent from his life
20 from a small child until just recently and that he
21 suffered both physical and mental abuse at the hands of
22 his mother's boyfriend.

23 One of the similarities between Mr. Jacob and
24 Mr. Konigsmark is the clear and unequivocal sense of
25 shame that they felt. There was a stipulation that on

1 May 16 that Mr. Konigsmark asked to apologize to A.P.
2 And Mr. Konigsmark had suicidal thoughts and was
3 hospitalized, and the reasonable inference from that is
4 he knew he'd done something wrong. He knew that he was
5 going to go to prison but not just that because plenty of
6 defendants know they're going to do something wrong and
7 know they're going to prison and they figure to
8 themselves, I think, that they're going to get out one
9 day and move on with their lives.

10 The difference here is that Mr. Konigsmark knew that
11 if and when he got out of prison his life would never be
12 the same. He'd be a sex offender. His family and
13 friends would look at him differently. And that's
14 another similarity between this defendant and the
15 defendant in Jacob.

16 And I would, based on the testimony of Dr. Konar,
17 cite, again, the Jacob case and its -- what I'll simply
18 call at page 1118 where Your Honor concluded that the
19 record demonstrated that Jacob's conduct was a result to
20 a substantial extent of immaturity, lack of judgment, and
21 social isolation and that his interest in a girl 8 or 10
22 years his junior, while far from acceptable, was not as
23 bizarre in an immature male in his early 20s or
24 necessarily indicative of deep-seated pedophilia or
25 predatory sexual conduct as such conduct might be for a

1 person one could reasonably expect to have more mature
2 judgment and social experience.

3 First, in Jacob who was evaluated by an expert, the
4 expert did not diagnose Jacob with any sort of borderline
5 intellectual disorders. Here we asked Your Honor to
6 accept the report and Dr. Konar's testimony that not only
7 based on the examinations administered by Dr. Konar but
8 also on the school records that Mr. Konigsmark does
9 suffer from borderline intellectual disorders that
10 further mitigate his behavior based on the studies we've
11 cited in our memo and the studies with which Your Honor
12 is obviously familiar.

13 And the defense -- and again, it's difficult to sort
14 of distinguish between 19-year-olds and 20-year-olds and
15 22-year-olds, 23-year-olds. But the defendant in Jacob
16 was 23, whereas Mr. Konigsmark here was 19 years old. So
17 those are some of the similarities and, of course,
18 dissimilarities that militate in favor of the advisory
19 range of 151 to 188 months.

20 And while the defense has acknowledged the
21 aggravating factors that are present in this case that
22 elevate it above the mandatory minimum, by way of
23 comparison again because it's hard to not compare 2 cases
24 where defendants were convicted under 2422(b) and both
25 cases involved a 12-, a 13-, or 14-year-old or, in Jacob,

1 I know a fictional but fictional 13-year-old or
2 15-year-old and I know that in this case there was actual
3 sexual intercourse on two occasions. But in Jacob as
4 Your Honor found, that defendant traveled from Minnesota
5 to Black Hawk County for the purpose of engaging in
6 sexual intercourse.

7 And I don't know how mitigating it is for that
8 defendant that but for the fictitious nature of the
9 15-year-old that he did not actually engage.

10 But one of the aggravating factors in Jacob, again,
11 by way of comparison that's not present here, is that the
12 defendant in Jacob was in possession of a digital camera.
13 He intended to record his sexual encounter with that
14 15-year-old girl.

15 That did not happen here, and that was part of the
16 thrust of our sentencing memo that what's really, in the
17 defense's opinion, occurring here and being punished here
18 is a sexual abuse in the third degree. And that's why we
19 presented Your Honor with Exhibits -- excuse me -- A and
20 B because A, of course, is a comprehensive survey of
21 every state and the District of Columbia. But Exhibit B
22 is also the expected time that a defendant convicted of
23 sex crimes in Iowa will actually serve. And that can
24 inform Your Honor's decision.

25 And I can go on and on about the differences between

1 this defendant and other defendants, and the defendant --
2 sorry, the defense is always hesitant to mitigate by way
3 of the offense could have been worse.

4 THE COURT: Well, what's your basis for that
5 that can or should inform my decision? I thought the
6 Eighth Circuit had ruled that we're not supposed to look
7 at equivalent state court punishment. That's my
8 recollection. And you know why it's my recollection?
9 Because I did, and they said I shouldn't have.

10 But I think there's another way to look at it. The
11 sentencing commission when it was formed by the
12 Sentencing Reform Act of 1984 -- I don't remember the
13 precise section, but the sentencing commission was
14 charged with seeking community input with regard to what
15 the guidelines ought to look at. Of course, it's
16 something the sentencing commission has never, ever done,
17 and I've criticized them in a couple law review articles
18 for not doing that.

19 So it seems to me that your exhibits can be
20 considered in that light about these are community
21 standards reflected by all 50 states, and the sentencing
22 commission hasn't taken that into consideration so in
23 terms of any policy disagreement I might have with the
24 way the guidelines work out here to create what I think
25 is a ludicrous sentence of life imprisonment. I mean,

1 people commit first-degree murder and, as you pointed out
2 in your brief, you know, people commit murder by
3 skyjacking an airplane and killing people and they get
4 the same sentence. So, you know, not that what he did
5 isn't super serious. It is. Nobody's trying to minimize
6 that. But it's pretty ridiculous to lump first-degree
7 murderers and people who highjack airplanes and kill
8 people with this individual.

9 MR. NATHAN: Yes, Your Honor. And the defense
10 would echo the argument from the sentencing memo which is
11 what Your Honor just stated.

12 THE COURT: Anything else you want to add?

13 MR. NATHAN: No, Your Honor. Thank you.

14 THE COURT: Okay. Mr. Tremmel? Parties aren't
15 really all that far apart in terms of proposed sentences.

16 MR. TREMMEL: Your Honor, we agree that a
17 variance below a life sentence would be appropriate.
18 This is, you know, as the parties acknowledge a serious
19 offense against younger girls. The defendant is a
20 20-year-old man with no prior criminal history. And he
21 did have family difficulties. He was 19, and he had
22 ADHD.

23 Dr. Konar is the only person who is suggesting that
24 there's a potential borderline intellectual functioning.
25 I don't see that supported by the records and by the

1 school records. Dr. Konar also said that the defendant
2 had impulse control problems. We don't find that
3 mitigating if the impulse control problem causes you to
4 have sex with a 12-year-old. He attempted to get
5 sexually explicit pictures from 3 separate younger girls,
6 and from the 12-year-old he did receive vaginal pictures
7 and had unprotected intercourse with her twice.

8 And what we would see as an aggravating factor in
9 this case is that the defendant was employed as a school
10 bus attendant and took advantage of that position to meet
11 the girls he exploited or attempted to exploit.

12 THE COURT: But that's already taken into
13 account in the guideline calculation.

14 MR. TREMMEL: Absolutely.

15 THE COURT: Yeah, it's not a 3553(a)
16 aggravating factor because it's already included in the
17 guidelines.

18 MR. TREMMEL: To the extent, Your Honor, that
19 the Court disagrees with the guidelines, though, I think
20 fact -- I think facts that are aggravating --

21 THE COURT: I don't disagree with that
22 guideline. I don't disagree with the enhancement that he
23 received for -- that his position on the bus allowed
24 him -- you know, facilitated the commission of the crime.
25 I think that's a perfectly permissible guideline

1 enhancement that makes a lot of sense, unlike many of the
2 others that don't, but that's not one I disagree with.

3 MR. TREMMEL: All right. Well, Your Honor,
4 based on all the factors, both aggravating and
5 mitigating, we believe that while a variance is
6 appropriate that the Court should impose a sentence of at
7 least 15 years' imprisonment. Thank you.

8 THE COURT: Thank you, Mr. Tremmel. I just
9 want to see if I have some more questions for you. Oh,
10 yeah. I'm interested in your comment about you don't see
11 the borderline intellectual functioning. So are you
12 saying that the score isn't very reliable that Dr. Konar
13 gave on the Wechsler -- his full-scale IQ score isn't?
14 But somebody -- because somebody in the lower 2 percent
15 would certainly be borderline functioning.

16 MR. TREMMEL: Your Honor, the only person who's
17 found this is Dr. Konar, and Dr. Konar obviously was
18 retained by the defense and is not certified with the
19 ABPP, and he is basing his conclusions in the rest of his
20 report on interviews with the defendant where the
21 defendant made statements that are inconsistent with what
22 the record shows.

23 So I don't think that Dr. Konar's evaluation alone
24 is persuasive authority to say that the defendant has an
25 intellectual disability or certainly that any

1 intellectual disability he has would be a significant
2 mitigating factor in this case, particularly if he's
3 claiming that impulse control arising out of that is what
4 caused him to have sex with a 12-year-old.

5 THE COURT: I don't think he's saying it's what
6 caused it. He's saying it's a contributing factor.
7 There's a difference.

8 So let me understand this. What is it about
9 Dr. Konar's administration of the Wechsler IQ test and
10 the results that you disagree with? Did he administer
11 the test improperly? Was it improperly scored? Is the
12 test not an accurate measure of full-scale IQ?

13 MR. TREMMEL: Given the limited information
14 that we have from Dr. Konar's report, it's difficult to
15 tell, you know, what the basis -- what the underlying
16 figures are that lead to those numbers.

17 THE COURT: Well, where's your test?

18 MR. TREMMEL: Your Honor, we don't have a test.

19 THE COURT: Well, you could have done a test.
20 You could have hired an expert. If you disagreed with
21 the Wechsler test, you could have hired an expert and had
22 your own test given. So it's a little bit, I think,
23 bizarre for you to stand there as a representative of the
24 executive branch of government and say I ought to
25 disregard a well-established, recognized test because the

1 defense hired the person and not present other evidence
2 to contradict it if you think it was an inaccurate test.
3 I'm not going to invalidate a standard recognized test
4 unless you can show there's a reason that I shouldn't
5 consider it.

6 But you haven't shown that it was improperly
7 administered, that it was improperly scored, that it's
8 not a generally recognized test of relevant IQ. And you
9 didn't take advantage of your opportunity to give your
10 own independent test by who -- a psychologist or
11 psychiatrist or whoever you chose and put that evidence
12 in the record.

13 MR. TREMMEL: Your Honor, we did not even know
14 there was an allegation that the defendant had borderline
15 intellectual disability until we received the exhibit
16 from the defendant that stated that. And so the Court is
17 correct that it can consider Dr. Konar's report and his
18 testimony for whatever weight it deems appropriate. It
19 appears, you know, likely that the Court is going to give
20 his report and testimony greater weight than the
21 government gives it. That's a point of disagreement.

22 THE COURT: Well, that may or may not be the
23 case. But I'm not talking about his entire testimony or
24 his entire report. I'm talking about an objective
25 recognized -- the singular most recognized IQ test, and

1 you can't point to anything in it in the way it was
2 administered or the test scores that I should discount.
3 You should just say, well, discount it because it was the
4 defendant's expert. But the answer to that is where's
5 yours, and there isn't any.

6 So I think it would be completely unfair to discount
7 that test score simply because you say I ought to
8 discount it because you don't have a single objective
9 reason why I should discount it. What's your objective
10 reason?

11 MR. TREMMEL: Your Honor, the objective reason
12 is the rest of the reports show that Dr. Konar is taking
13 Mr. Konigsmark at his word. He doesn't even put in his
14 report the admission that he -- now it's that he
15 attempted to have sexual intercourse with a 12-year-old.

16 THE COURT: And what does that have to do with
17 an IQ test?

18 MR. TREMMEL: I think when the entire report is
19 based on going just with what the defendant tells you and
20 that's it, that that reflects upon all the work that he
21 did.

22 THE COURT: Well, I suspect that, you know, the
23 only way to do an IQ test of this individual is to have
24 this individual take it, not to have somebody else take
25 it for him.

1 So I just don't -- the fact that you can pick at a
2 couple of points in the report and say, well, there's
3 another way of looking at it which I agree with --
4 there's multiple ways of looking at it -- doesn't
5 invalidate an objective, psychological well-recognized
6 test, particularly when you had the opportunity to do
7 your own test.

8 So I'm not going to discount that test. I'm willing
9 to discount some other things in the report but not an
10 objective test because there's no reason to. And I think
11 your reasons that you offered are ridiculous. I don't
12 give -- I give zero weight to any of your reasons on why
13 I should discount the Wechsler test because I don't think
14 you have -- they're not even in the ballpark of being
15 reasonable. They're so patently unreasonable and
16 ridiculous that I can't imagine anybody discounting this
17 test for those reasons except you --

18 MR. TREMMEL: I understand, Your Honor.

19 THE COURT: -- okay? But I'm willing to take
20 all day for you to give me any more objective reasons
21 about why I ought to discount it.

22 MR. TREMMEL: Your Honor, all I have is the
23 limited information of a half a page chart that we have
24 here, and so I don't have anything more on the basis for
25 how he got the results on that chart.

1 THE COURT: You could have requested the
2 underlying tests and had that data analyzed if you wanted
3 to.

4 MR. TREMMEL: Your Honor, we got this report
5 recently. This is all the data that --

6 THE COURT: When did you get the report?

7 MR. TREMMEL: Well, it's file stamped the 29th,
8 Your Honor. I would have to look at -- I don't have
9 my --

10 THE COURT: 29th of what month?

11 MR. TREMMEL: Of this month. I don't
12 have the -- I don't have --

13 THE COURT: It wouldn't be this month. We
14 haven't hit the 29th yet.

15 MR. TREMMEL: I'm sorry. Of November.

16 THE COURT: Okay. You could have asked for a
17 continuance.

18 MR. TREMMEL: I don't -- I don't have my e-mail
19 records to what day they were --

20 THE COURT: Okay. But, you know, had you
21 wanted to contest the -- an expert opinion, I would have
22 granted a continuance, particularly if you didn't get the
23 report until last week. But anything else?

24 MR. TREMMEL: No, Your Honor.

25 THE COURT: Mr. Nathan, anything else?

1 MR. NATHAN: No, Your Honor.

2 THE COURT: So, Mr. Tremmel, are you -- let's
3 ask about this other part. I'll tell you what I thought
4 was the most significant part of the report, and that's
5 on page 10, and it was the paragraph under conclusions,
6 the middle paragraph. Tyler Konigsmark's poor judgment,
7 lack of impulse control, perpetual lower self-esteem, and
8 arrested psychological development along with his
9 long-term issues of alienation and impaired and strange
10 thought processes are genuine. Then he goes on to say,
11 "At the very least, this scenario suggests very strong
12 mitigating factors." I give that no weight because it's
13 not my job to give a defendant psychological tests.
14 That's the doctor's job, and it's not his job to tell me
15 what mitigating factors are. That's my job.

16 So I'm totally discounting his last sentence. I
17 happen to agree with him but not because he stated it.
18 It's because I made my own independent judgment that
19 those are mitigating. But my question for you is are
20 those things supported by the record, and are they
21 mitigating.

22 MR. TREMMEL: Your Honor, his poor judgment is
23 not mitigating if his poor judgment is what leads him to
24 have sex with a 12-year-old. Neither is his lack of
25 impulse control. His perpetual lower self-esteem is

1 mitigating to an extent in terms of his arrested
2 psychological development. I don't know to what extent
3 we would agree with that, but his long-term issues of
4 alienation and impaired and strange thought process,
5 doctor says those are genuine based in part on things
6 that the defendant said in the interview that we weren't
7 aware of in prior records. So to the extent those things
8 are true, they could be somewhat mitigating. But
9 overall, I don't think the totality of all those factors
10 listed are significantly mitigating.

11 THE COURT: Okay. I just want to clarify your
12 comments. With regard to poor judgment and lack of
13 impulse control, I thought you said they were not
14 mitigating. Then at the end I thought you may have said
15 they could be mitigating but not significantly
16 mitigating. So just clarify that for me. What's the --
17 what's your position?

18 MR. TREMMEL: Well, on the poor judgment and
19 lack of impulse control, if -- I don't think his poor
20 judgment in committing this offense and the lack of
21 impulse control is mitigating. I think if he's got
22 issues with his family and long-term issues of alienation
23 and such things making his life more difficult, I think
24 this Court has recognized those types of issues as
25 mitigating in the past.

1 So I think when you weigh all of those factors
2 together that are listed, some mitigating and some not, I
3 would disagree that it's very strong mitigating factors
4 as Dr. Konar argues.

5 THE COURT: Okay. Now, almost every criminal
6 that you see and that I see and that Mr. Nathan sees,
7 they have poor judgment and poor impulse control. That's
8 one of the big reasons that separates people who commit
9 crimes from people who don't commit crimes. It can still
10 be mitigating just because almost every defendant has
11 poor judgment or poor impulse control. It can be
12 mitigating. I don't consider it mitigating in general
13 if -- if the defendant was 40 years old, his poor impulse
14 control would not be mitigating.

15 But I consider it mitigating in this case because
16 the science overwhelming says that a person of his age at
17 the commission of the crime, 19 years old, his prefrontal
18 cortex, particularly his dorsolateral prefrontal cortex
19 which controls executive functioning, is clearly not
20 developed by age 19. It doesn't really fully develop
21 till -- for a Caucasian male until they're in their mid
22 20s. 25, 26, it becomes fully developed. So that's what
23 he was relying on when he cited to the Teen Brain Still
24 Under Construction, National Mental Health of Institute
25 monograph.

1 But if -- accept for a moment it's true that for
2 most 19-year-old males their brain is not fully developed
3 because their prefrontal cortex is not fully developed
4 and that leads to poor impulse control. Why on earth
5 would that not be mitigating?

6 MR. TREMMEL: Your Honor, I don't see most
7 19-year-olds having sex with 12-year-olds, and so I just
8 don't think the fact that he's 19 years old and the
9 prefrontal cortex issues the Court has identified, that
10 that makes it mitigating, but I understand that's the
11 Court's position and that will go into the Court's
12 judgment on this.

13 THE COURT: Yeah, you're right. Most
14 19-year-olds do not have sex with 12-year-olds, thank
15 God. But most 19-year-olds engage in conduct
16 demonstrating poor impulse control. Whether they get
17 caught by law enforcement or not is another issue. But
18 that's just a fact. It doesn't justify what he did. You
19 know, he's not going to get a get-out-of-jail-free card
20 and walk out of this courtroom with probation. Even if
21 there wasn't a mandatory minimum, I would sentence him to
22 a significant term of imprisonment. But to say it's not
23 mitigating, we'll just have to agree to disagree on that
24 one. Thank you.

25 Anything else either lawyer would like to add?

1 MR. NATHAN: No, Your Honor.

2 THE COURT: Okay. Mr. Konigsmark, you have the
3 right to say anything to me you want to before I impose
4 sentence. You have a right to remain silent, so you
5 don't have to say anything. If you exercise your right
6 to remain silent, I will not hold that against you in any
7 way. Sometimes when defendants give up their right to
8 remain silent and say something, it helps them.
9 Sometimes it actually increases their sentence, and
10 sometimes it has no impact. So what would you like to
11 do?

12 THE DEFENDANT: I'd like to speak, Your Honor.

13 THE COURT: Okay. Thank you.

14 THE DEFENDANT: Thank you. Your Honor, I'd
15 like to apologize directly to the victims that were
16 involved in this crime. I understand that -- understand
17 the seriousness of it, and I take full-on responsibility,
18 and I do not blame anybody else but myself.

19 I also would like to apologize to the Cedar Rapids
20 Community School District for my actions and my family
21 and friends. I can't thank them enough for still
22 supporting me and still having faith in me and still
23 watching over me. That would be it, Your Honor.

24 THE COURT: Okay. Thank you.

25 THE DEFENDANT: Thank you.

1 THE COURT: Can I get one clarification I think
2 from the lawyers? I'm pretty tech savvy, but I'm a
3 little bit behind the times lately. So I do have a
4 Twitter feed, and, you know, I have a Facebook page.
5 Snapshot (sic), no, I don't. Instagram, yes. Snapshot,
6 no. Is Snapshot the one where the picture actually
7 disappears after a few seconds or something?

8 MR. NATHAN: Yes, Your Honor. And the defense
9 maybe didn't do a good-enough job of this, but in the
10 sentencing memo --

11 THE COURT: I thought you did that.

12 MR. NATHAN: -- we did footnote that it deletes
13 automatically after ten seconds unless you what I'll
14 call --

15 THE COURT: You can do something to --

16 MR. NATHAN: You screen shot.

17 THE COURT: You take a screen shot, and then
18 you can actually forward the screen shot to somebody
19 else.

20 MR. NATHAN: Right.

21 THE COURT: And that was my point. That wasn't
22 done in this case.

23 MR. NATHAN: There's nothing in the record --

24 THE COURT: There's no evidence that it was
25 forwarded to anybody else which would make it

1 substantially more aggravating; right?

2 MR. NATHAN: Correct.

3 THE COURT: Okay. Okay. Thanks. I'm ready to
4 rule.

5 I'm granting the defendant's motion for a downward
6 variance. I have a number of reasons for my variance
7 decision. The fact that the defendant has no prior
8 criminal history is mitigating, although that's taken
9 into account in the criminal history category 1. As I've
10 said on several occasions, there's a criminal history
11 category 1 and a criminal history category 1. Sometimes
12 you see multiple convictions that aren't scored for any
13 reason. Here he's a pure criminal history category 1.
14 And the Eighth Circuit has said that you can consider
15 that as part of a downward variance, but it doesn't
16 justify a large downward variance, so it's a very small
17 part of the reasons why I'm varying.

18 The substantial reasons for my variance are exactly
19 what the government and I disagree with, and that would
20 be the paragraph on page 10 of Dr. Konar's report. I
21 think the defendant's poor judgment, lack of impulse
22 control, perpetual lower self-esteem, and arrested
23 psychological development didn't cause the crime, but
24 they were directly related to the commission of the crime
25 and factors that contributed to the crime and are, in my

1 view, substantially mitigating.

2 If Mr. Konigsmark was a 40-year-old man, very few of
3 those factors would apply, but he was 19 years old at the
4 time he committed the crime, and I think I would be
5 extremely negligent in my duties if I didn't take that
6 into consideration in forming the judgment about what an
7 appropriate sentence is.

8 Other mitigating factors would include -- I think
9 there's a very low likelihood of reoffending. The fact
10 that Mr. Konigsmark was honest with the police in the
11 interview and cooperated with law enforcement is
12 mitigating, and I think it helps establish that he's got
13 a greater likelihood of rehabilitation. I don't think he
14 minimized in his discussions with law enforcement. I
15 guess one could argue that there was some minimization in
16 the psychological report, but that was probably due to
17 the questions that were either not asked or not fully
18 developed. It wasn't due to anything that would be
19 attributable to the defendant.

20 Defendant's lack of a stable childhood and lack of
21 parental supervision and upbringing is definitely
22 mitigating, and the defendant's lack -- young age even
23 without the strong neuroscience evidence of a lack of
24 fully developed prefrontal cortex is strongly mitigating.
25 So those are the mitigating factors.

1 In terms of aggravating factors, the fact that three
2 girls were involved in the offense is aggravating, but
3 there was an enhancement for that I believe. And the
4 fact that he used his duties on the school bus or in
5 connection with the school bus to connect with these
6 three girls is an aggravating factor. But that was taken
7 into consideration in the guideline calculations. And
8 those -- you know, but for those two aggravating factors,
9 I would sentence at the bottom of the guideline range of
10 120 months, but I think they are aggravating.

11 But I think the mitigating factors that I've
12 outlined substantially outweigh the aggravating factors
13 in this case. And my job in sentencing is to weigh the
14 aggravating and mitigating factors. And, you know, we
15 have to weigh that which cannot actually be measured, put
16 it on a balance and make our best judgment.

17 It's my judgment that you are hereby committed to
18 the custody of the Bureau of Prisons to be imprisoned for
19 132 months. That's my best judgment about a sentence
20 that is sufficient but not greater than necessary to
21 achieve all of the sentencing purposes.

22 We didn't really discuss the length of supervised
23 release. Can be anywhere from five years to life.

24 Mr. Tremmel, what does the government recommend?

25 MR. TREMMEL: Whatever the Court deems

1 appropriate, Your Honor.

2 THE COURT: How about the defense?

3 MR. NATHAN: We'd ask for the minimum, Your
4 Honor.

5 THE COURT: I think I'm going -- given the fact
6 that I gave a substantial variance, I think I'm going to
7 go beyond the minimum and impose a term of ten years of
8 supervised release. After you -- if you successfully
9 complete half of it, then you're eligible to ask
10 probation to ask the judge to reduce your term of
11 supervised release, but I think given all of the factors
12 ten years of supervised release is appropriate.

13 You'll have the standard conditions set forth in
14 your judgment, and you'll have some special conditions
15 that are set forth in the presentence report, paragraphs
16 92 to 103. There are no objections to it. So all of
17 those special conditions are imposed.

18 You don't have the ability to pay a fine, so the
19 fine is waived. There's a hundred-dollar special
20 assessment due and owing. And there's also a \$5,000
21 special assessment that's due and owing.

22 Does the defense have any objection to the
23 imposition of that? There is that \$20,000 CD that was
24 reflected in the presentence report, so I think he does
25 have the ability to pay that. Do you have any argument

1 about why I shouldn't impose it?

2 MR. NATHAN: No, Your Honor. The CD is a basis
3 to impose it.

4 THE COURT: Okay. Then I'm going to go ahead
5 and impose the \$5,000 special assessment required by
6 Title 18 section 3014. You're remanded to the custody of
7 the United States marshal.

8 You have a right to appeal the decision that I
9 imposed. If you decide to appeal, you need to file a
10 written notice of appeal with the clerk of this court no
11 later than 14 days from the date the judgment is filed.
12 If you can't afford to pay for a lawyer, pay the costs of
13 an appeal, those costs will be paid on your behalf.

14 I'd ask the U.S. marshals to accommodate a family
15 visit if that can be done.

16 Anything further on behalf of the defendant,
17 Mr. Nathan?

18 MR. NATHAN: Should I ask for a BOP placement
19 now, Your Honor?

20 THE COURT: Yes.

21 MR. NATHAN: So the PSR does indicate that
22 Mr. Konigsmark had some, I believe, blood in his urine.
23 And I did speak to the government before and informed
24 them that when it came time to ask for BOP placement that
25 I would cite just some recent hospital records the

1 defendant received from UIHC that he was just seen there
2 earlier last month, and they are recommending further
3 testing, a CT urogram which I believe --

4 THE COURT: Because of his one kidney?

5 MR. NATHAN: Right.

6 THE COURT: Right.

7 MR. NATHAN: And so we would ask based on that
8 for placement at FMC Devens which also, I believe, offers
9 sex offender treatment program.

10 THE COURT: It does, that's right.

11 MR. NATHAN: So we'd ask for placement at FMC
12 Devens, Your Honor.

13 THE COURT: Does the government have any
14 objection?

15 MR. TREMMEL: No, Your Honor.

16 THE COURT: Okay. I'll make that
17 recommendation to the Bureau of Prisons. Thank you.
18 Anything else on behalf of the defense?

19 MR. NATHAN: No, Your Honor. Thank you.

20 THE COURT: Mr. Tremmel, anything else on
21 behalf of the United States?

22 MR. TREMMEL: No, Your Honor.

23 THE COURT: Okay. Thank you. We'll be in
24 recess. I'm running behind.

25 (The sentencing was concluded at 11:35 a.m.)

CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

S/Shelly Semmler
Shelly Semmler, RMR, CRR

8-4-20
Date

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